

FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

SEP 24 2002

OFFICE OF  
MANAGING DIRECTOR

William Holzheimer, President  
Phoenix Broadcasting, Inc.  
3098 Airport Way  
Fairbanks, AK 99709

Re: Phoenix Broadcasting, Inc., Stations  
KSWD(AM) and KPFN(FM), Seward, Alaska  
Request for Waiver of FY 2000 Regulatory Fees  
Fee Control No. 00000RROG-02-055

Dear Mr. Holzheimer:

This is in response to your letter dated May 9, 2002, filed on behalf of Phoenix Broadcasting, Inc. (Phoenix), licensee of Stations KSWD(AM) and KPFN(FM), Seward, Alaska, requesting a waiver of the fiscal year (FY) 2000 regulatory fees. **You** request a waiver of the \$375.00 and \$300.00 regulatory fees for Stations KSWD(AM) and KPFN(FM), respectively, on the grounds of financial hardship. **Our** records reflect that you have not paid the FY 2000 regulatory fee for Station KSWD(AM) and that you have paid the FY 2000 regulatory fee for Station KPFN(FM).

In your request, you assert that Stations KSWD and KPFN are in precarious financial condition because of "the failure of the Commission to enforce its February 2000 decision requiring Peninsula . . . [Communications, Inc.] to cease operating two FM translators in Seward[, Alaska]" and because of the Commission's failure to expedite its May 2001 *Show Cause Order* directing Peninsula to show cause why it should not be required to cease operating its Seward translators.' You maintain that Stations KSWD and KPFN have suffered "severe economic harm" as a result of the Commission's lack of expedition in addressing Peninsula's operation of the two Seward translators in violation of the Commission's rules.

The Commission may waive, reduce, or defer regulatory fees only upon a showing of good cause and a finding that the public interest will be served thereby. *See* 47 U.S.C. §159(d); 47 C.F.R. §1.1166; *see also Implementation of Section 9 of the Communications Act, Assessment and Collection of Regulatory Fees for the 1994 Fiscal Year, Report and Order*, 9 FCC Rcd 5333, 5344 (1994), *on recon.*, *Memorandum Opinion and Order*, 10

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<sup>1</sup> *See generally Peninsula Communications, Inc., Memorandum Opinion and Order*, 15 FCC Rcd 3293 (2000); *Peninsula Communications, Inc., Memorandum Opinion and Order and Order to Show Cause*, 16 FCC Rcd 16124 (2001).

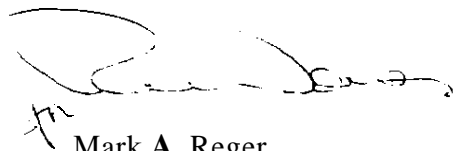
FCC Rcd 12.759, para. 12 (1995) (regulatory fees may be waived, deferred, or reduced on a case-by-case basis in extraordinary and compelling circumstances upon a clear showing that a waiver would override the public interest in reimbursing the Commission for its regulatory costs). The Commission will waive, reduce or defer its regulatory fees in those instances where a petitioner presents a compelling case of financial hardship. *See Implementation of Section 9 of the Communications Act*, 9 FCC Rcd 5333, 5346 (1994), *on recon*, 10 FCC Rcd 12759 (1995). Regulatees can establish financial hardship by submitting:

information such as a balance sheet and profit and loss statement (audited, if available), a cash flow projection . . . (with an explanation of how calculated), a list of their officers and their individual compensation, together with a list of their highest paid employees, other than officers, and the amount of their compensation, or similar information. 10 FCC Rcd at 12761-12762.

In the absence of such documentation, or other relevant showing, you have failed to establish a compelling case for relief. Therefore, your request for FY 2000 regulatory fee relief for Stations KSWD(AM) and KPFN(FM) regulatory fees is denied. Payment of the FY 2000 regulatory fee in the amount of \$300.00 for Station KSWD(AM) is now due. The \$300.00 should be filed together with a Form FCC 159 (copy enclosed) within 30 days from the date of this letter. However, in view of your allegations of financial hardship, in lieu of payment, you may refile Phoenix's request together with appropriate supporting documentation and a request to defer further payment of the fee, within 30 days from the date of this letter.

If you have any questions concerning this matter, please contact the Revenue & Receivables Operation Group at (202) 418-1995.

Sincerely,

A handwritten signature in black ink, appearing to read "Mark A. Reger", with a stylized flourish at the end.

Mark A. Reger  
Chief Financial Officer

Enclosure

00000RR06-02-055

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May 9, 2002

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Mr. Andrew Fischel  
Managing Director  
Federal Communications Commission  
Washington, DC 20054

TP

Re: Refund of Regulatory Fee

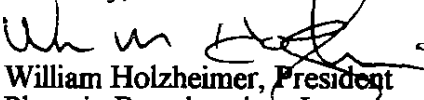
Dear Mr. Fischel:

I am writing on behalf of Phoenix Broadcasting, Inc., licensee of Stations KSWD(AM) and KPFN(FM), Seward, Alaska, to request refund of the FY 2000 Regulatory fees in the amounts of \$375 (KSWD) and \$300(KPFN) that were paid with respect to these stations

Refund of the regulatory fees is warranted based on the fact that Stations KSWD and KPFN are in precarious financial condition due in large part to the failure of the Commission to enforce its February 2000 decision requiring Peninsula Broadcasting to cease operating two FM translators in Seward. In May, 2001, the Commission issued a Show Cause Order as to why Peninsula should not be required immediately to cease operating its Seward translators and in that order it promised to act on the matter "expeditiously". Nearly a year has passed since the issuance of that Show Cause Order and no action has been taken. As a direct consequence of the Commission's lack of expedition in addressing the problem of the operation of Peninsula's Seward translators in contravention of the Commission's rules, KSWD and KPFN have suffered and continue to suffer severe economic harm. In these circumstances, the least that the Commission can do to ameliorate the consequences to Phoenix Broadcasting of the Commission's inaction is to refund the regulatory fees for KSWD and KPFN that Phoenix has paid. Furthermore, Peninsula Communications continues to ignore the Commission's rules. This is an example of damage done not only to myself as a competing broadcaster, but to the community of license through the confusion perpetuated by Peninsula and the Commission itself.

If you have any questions concerning this request, please call me at (907)455-9690

Sincerely,

  
William Holzheimer, President  
Phoenix Broadcasting, Inc.

c. Roy Stewart, Chief  
Media Bureau

- ① Two dy Letter
- ② To: Patty Cappello  
& Tom Putnam
- ③ Tickler for 28 dys.

Per  
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